

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1167 of 1985

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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KRISHHNA OIL MILL

Versus

STATE OF GUJARAT  
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Appearance:

MR PM RAVAL for Petitioner No. 1-2  
MR KL PANDYA, AGP for Respondent No. 1-2  
MR KG VAKHARIA for Respondent No. 3  
MR DM THAKKAR for Respondent No. 4  
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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 16/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1. The present appeal is filed by the original plaintiffs against the judgement and decree passed by the Civil Judge (Senior Division), Gondal, in Special Civil Suit No.9/1981 dated 18th August 1984, whereby the Court has dismissed the suit.

2. The appeal was admitted on 19th September 1985. For the sake of convenience, the appellants will be referred to as "the plaintiffs" and the respondents will be referred to as "the defendants", as the case may be, in this judgement. The plaintiff no.1, a registered partnership firm and plaintiff no.2, the partner of plaintiff no.1, carrying on the business of manufacturing and selling of groundnut oil and solvent extract oil, filed a civil suit in the court of Civil Judge (Senior Division), Gondal, for damages for an amount of Rs.14 lacs i.e. Rs.1,96,434/- as difference of price for compulsory delivery of 4520 tins of groundnut oil, Rs.2,00,000/- as damages by way of interest and loss in business, Rs.5,00,000/- by way of token damages for unlawful detention under MISA and for mental torture, Rs.5,00,000/- for loss of business and reputation and Rs.3,566/- for expenditure for conveyance, telegrams, telephones, etc. However, at the time of hearing the claim was reduced to Rs.3,00,000/-.

3. The defendant nos.1 and 2 appeared before the trial court and filed their written statement at Exh.26 denying the allegations made in the plaint and pointed out that the plaintiffs were not entitled for any damages. The defendant nos.3 and 4, though served, did not file their written statement and the suit was proceeded further. The trial court has framed issues at Exh.29 and after taking the evidence of the plaintiff firm and its partner, dismissed the suit mainly on the ground of limitation.

4. The plaintiffs, while filing the suit, in paragraph 17 of the suit, have stated that the cause of action has arisen on 16th February 1974, the date of so-called voluntary agreement and the plaintiff no.2 was released by the State Government after detention on 13th June 1974. It was contended by the plaintiffs that they have preferred Special Civil Application No.1190/74 on 23rd July 1974 which was disposed of on 16th February 1978 and therefore in view of the provisions of section 14 of the Limitation Act, 1963, the time which had taken for the proceedings in the High Court should not be

counted for the purpose of limitation.

5. We have heard the learned counsel for the respective parties and have also perused the impugned judgement and the oral and documentary evidence on record.

6. Mr. K.L. Pandya, learned AGP, pointed out that the suit is clearly time-barred in view of the provisions of Articles 73, 80 and 113 of Schedule to the Limitation Act. As per Article 73, the suit is required to be filed within one year from the date of imprisonment, as per Article 80 the suit for compensation for wrongful seizure of movable property under legal process is required to be filed within one year from the date of seizure, and as per Article 113 any suit for which no period of limitation is provided elsewhere in the Schedule, the suit is required to be filed within three years from the date when the right to sue accrued in favour of the plaintiff. In the present case, as per the say of the plaintiffs, the cause of action has arisen on 16th February 1974. Therefore, the suit ought to have been filed before 15th February 1977.

7. The contention raised by the plaintiffs regarding exclusion of time of proceedings bone fide in court without jurisdiction as per section 14 of the Limitation Act cannot be accepted in the present case inasmuch as the writ petition was filed for a different relief and the Court has not relegated to the plaintiffs for any other suit on the ground of defect of jurisdiction, but the writ petition was disposed of on the ground of having become infructuous. In this regard, this Court has observed as under:

"One thing that clearly emerges from the petition is that whatever was done or was sought to be done has been fait accompli and no executable direction or order could be issued by this court now at this stage. As said by me at the outset of this judgement, even prima facie what seems to have been done by the Mamlatdar and the Collector of Dhoraji and Rajkot respectively passes by comprehension and it is difficult to understand how such orders could be passed. However, at the same time, I refrain from expressing any final opinion on various facts of the pleas put forth by Mr. Daru on behalf of the petitioner. Whatever damage has been done to the petitioner on account of these orders, which were constrained to be complied with or whatever other

consequences that might have ensued to the petitioner because of these various actions, at the most be dealt with properly in the course of judicial or quasi-judicial proceedings. In the changed circumstances, during the course of four about years in between those occurrences and the present days, no effective direction, order or writ could be issued by this Court and it is only on this ground that I do not entertain this petition, leaving the petitioner to its other remedies in accordance with law. I, however, recommend to the Government Pleader who represents the State before me in this petition to report to the Government and the concerned department to examine the legality and try to redress the grievances of the petitioner preferably across the table rather than inviting unpleasant disputes and litigations. With this recommendation I dispose of this petition as not being fructuous in the present day circumstances.

The petition is accordingly disposed of. Rule is discharged with no order as to costs."

8. In this view of the matter the suit has been filed after the period of limitation. Therefore, the trial court was fully justified in dismissing the suit on the ground that the suit was clearly time-barred.

9. We are in complete agreement with the appreciation of the oral and documentary evidence on record on the part of the trial court, the conclusions drawn therefrom and the findings of fact recorded. We are, therefore, not inclined to interfere in the present appeal and the same is, therefore, dismissed. No order as to costs.

[KSHITIJ R. VYAS, J.]

[K.S. JHAVERI, J.]

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